

## § 68.28

## 28 CFR Ch. I (7–1–06 Edition)

(d) *Ruling.* Time permitting, the Administrative Law Judge shall enter a written order in advance of the scheduled proceeding date that either grants or denies the request. Otherwise, the ruling shall be made orally by telephonic communication to the party requesting the continuance, who shall be responsible for telephonically notifying all other parties. Oral orders shall be confirmed in writing by the Administrative Law Judge.

[Order No. 2203–99, 64 FR 7077, Feb. 12, 1999]

### § 68.28 Authority of Administrative Law Judge.

(a) *General powers.* In any proceeding under this part, the Administrative Law Judge shall have all appropriate powers necessary to conduct fair and impartial hearings, including, but not limited to, the following:

(1) Conduct formal hearings in accordance with the provisions of the Administrative Procedure Act and of this part;

(2) Administer oaths and examine witnesses;

(3) Compel the production of documents and appearance of witnesses in control of the parties;

(4) Compel the appearance of witnesses by the issuance of subpoenas as authorized by law;

(5) Issue decisions and orders;

(6) Take any action authorized by the Administrative Procedure Act;

(7) Exercise, for the purpose of the hearing and in regulating the conduct of the proceeding, such powers vested in the Attorney General as are necessary and appropriate therefore; and

(8) Take other appropriate measures necessary to enable him or her to discharge the duties of the office.

(b) *Enforcement.* If any person in proceedings before an Administrative Law Judge disobeys or resists any lawful order or process, or misbehaves during a hearing or so near the place thereof as to obstruct the same, or neglects to produce, after having been ordered to do so, any pertinent book, paper, or document, or refuses to appear after having been subpoenaed, or upon appearing refuses to take the oath as a witness, or after having taken the oath refuses to be examined according to law, the Administrative Law Judge re-

sponsible for the adjudication may, where authorized by statute or law, apply through appropriate counsel to the Federal District Court having jurisdiction in the place in which he/she is sitting to request appropriate remedies.

[54 FR 48596, Nov. 24, 1989. Redesignated and amended by Order No. 1534–91, 56 FR 50053, 50055, Oct. 3, 1991; Order No. 1635–92, 57 FR 57672, Dec. 7, 1992]

### § 68.29 Unavailability of Administrative Law Judge.

In the event the Administrative Law Judge designated to conduct the hearing becomes unavailable, the Chief Administrative Hearing Officer may designate another Administrative Law Judge for the purpose of further hearing or other appropriate action.

[54 FR 48596, Nov. 24, 1989. Redesignated by Order No. 1534–91, 56 FR 50053, Oct. 3, 1991]

### § 68.30 Disqualification.

(a) When an Administrative Law Judge deems himself or herself disqualified to preside in a particular proceeding, such judge shall withdraw therefrom by notice on the record directed to the Chief Administrative Hearing Officer.

(b) Whenever any party shall deem the Administrative Law Judge for any reason to be disqualified to preside, or to continue to preside, in a particular proceeding, that party shall file with the Administrative Law Judge a motion to recuse. The motion shall be supported by an affidavit setting forth the alleged grounds for disqualification. The Administrative Law Judge shall rule upon the motion.

(c) In the event of disqualification or recusal of an Administrative Law Judge as provided in paragraph (a) or (b) of this section, the Chief Administrative Hearing Officer shall refer the matter to another Administrative Law Judge for further proceedings.

[54 FR 48596, Nov. 24, 1989. Redesignated by Order No. 1534–91, 56 FR 50053, Oct. 3, 1991]

### § 68.31 Separation of functions.

No officer, employee, or agent of the Federal Government engaged in the performance of investigative or prosecutorial functions in connection with